



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 20 2019

Mrs. Linda Culpepper
Director
Division of Water Resources
North Carolina Department of Environmental
Quality
1611 Mail Service Center
Raleigh, North Carolina 27699-1611

Dear Mrs. Culpepper:

The purpose of this letter is to approve North Carolina's designated use revision, submitted electronically to the U.S. Environmental Protection Agency on May 23, 2019, and officially received on May 29, 2019. In your letter, written to Acting Regional Administrator Mary Walker, now the Regional Administrator, you submitted a revision which modified the use designation for Enka Lake in Buncombe County from Class C to Class B. By adding the Class B primary recreation designated use, North Carolina has specified the appropriate water uses to be achieved and protected, consistent with 40 C.F.R. Section 131.10(a).

A certification letter from the Senior Deputy Attorney General, dated May 15, 2019, was included in the submission from North Carolina, and concludes that the revision was duly adopted pursuant to state law and is valid and enforceable in the state of North Carolina. In accordance with 40 C.F.R. Section 131.21(c), new and revised state and tribal water quality standards are not effective for Clean Water Act (CWA) purposes until approved by the EPA. The EPA has concluded the revisions are consistent with the goals of Section 101(a) of the CWA and the implementing regulations at 40 C.F.R. Part 131. In accordance with Section 303(c) of the CWA and 40 C.F.R. Part 131, and as laid out in the enclosed decision document, the EPA is approving this revision.

If you have any questions, please feel free to contact me at (404) 562-9345 or have a member of your staff contact Mrs. Lauren Petter at (404) 562-9272 or petter.lauren@epa.gov.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeanne M. Gettle".

Jeanne M. Gettle, Director
Water Division

**Decision Document of the United States Environmental Protection Agency Determination
Under Section 303(c) of the Clean Water Act Review of North Carolina's
2018 Reclassification for Enka Lake (French Broad River Basin) to Class B**

Background

Based on a request from Biltmore Lake Association, the homeowners' association for the Biltmore Lake community, North Carolina revised the classification of Enka Lake from Class C to Class B. Regarding the water quality criteria and designated use expectations, Class C applies to all fresh waters of the State and includes protection for aquatic life propagation, maintenance of biological integrity, fishing, wildlife, secondary recreation, agriculture and any other usages except primary recreation or as a water supply. Class B designations apply in addition to all Class C purposes. These Class B revisions were made to protect the existing waters' primary recreation uses. In making these revisions, North Carolina has provided additional protection to the subject waters for primary recreation purposes including swimming, skin diving, water skiing, and similar uses involving human body contact with water where such activities take place in an organized or frequent basis.

Clean Water Act Requirements

Under Section 303(c) of the Clean Water Act (CWA) and federal implementing regulations at 40 C.F.R. Part 131, states and authorized tribes have the primary responsibility for reviewing, establishing, and revising water quality standards (WQS), which consist of the designated uses of a waterbody or waterbody segment, the water quality criteria necessary to protect those designated uses and an antidegradation policy. The regulations at 40 C.F.R. Sections 131.10, 131.11 and 131.12 provide the minimum expectations for designated uses, water quality criteria and antidegradation, respectively.

Each state or tribe must follow its own legal procedures for adopting WQS. 40 C.F.R. Section 131.6(e). The state or tribe must submit certification by the appropriate legal authority within the state or tribe that the WQS were duly adopted pursuant to state or tribal law. Id.

Section 303(c) of the CWA also requires states and tribes to submit new or revised WQS to the EPA for review. The EPA is required to review these changes to ensure revisions to WQS are consistent with the CWA. When the EPA approves a state or tribal WQS, it becomes the applicable WQS for purposes of the CWA. 40 C.F.R. Section 131.21(c)(2).

Endangered Species Act Requirements

Section 7(a)(2) of the Endangered Species Act requires federal agencies, in consultation with the U.S. Fish and Wildlife Service (FWS) or the National Marine Fisheries Service, to ensure that their actions are not likely to jeopardize the continued existence of federally listed species or result in the destruction or adverse modification of designated critical habitat of such species. The EPA Region 4 office concluded that no consultation with the FWS is required on this fresh water action because all the newly applicable criteria associated with the Class B designated use are related to human health protection.

EPA's Review and Findings

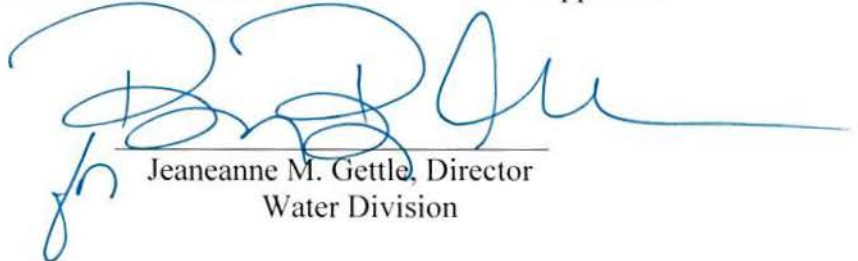
The revisions addressed in this document were discussed in a public hearing held in Biltmore Lake, North Carolina on August 8, 2018 and approved for adoption by the North Carolina Environmental Management Commission on November 8, 2018. The revisions reclassify the lake from Class C to Class B and became effective on January 1, 2019. Twenty-three people registered at the public hearing with eight people making comments during the hearing. In addition to oral comments, written comments were provided. No comments against the reclassification were verbalized and written comments were in support of the reclassification.

In a letter written to Acting Regional Administrator Mary Walker, now the Regional Administrator, Linda Culpepper, Director for the Division of Water Resources for the North Carolina Department of Environmental Quality, submitted new and revised WQS for review by the EPA pursuant to Section 303(c) of the CWA. The letter and supporting documentation were received electronically on May 23, 2019 and officially received on May 29, 2019. In a May 15, 2019, letter, North Carolina's Senior Deputy Attorney General certified that the WQS revisions were duly adopted pursuant to North Carolina law. By adding the primary recreation designated use, North Carolina has specified the appropriate water uses to be achieved and protected, consistent with 40 C.F.R. Section 131.10(a).

Conclusions

Based on the reason outlined above, it is our conclusion that the requirements of the CWA and 40 C.F.R. Part 131 have been met for the revised use classification and the revision is therefore approved.

6/20/19
Date



Jeaneanne M. Gettle, Director
Water Division